

SENATE BILL 1853
By Leatherwood

AN ACT to amend Tennessee Code Annotated, Sections 36-1-101, 36-1-102, 36-1-103, 36-1-104, 36-1-105, 36-1-106, 36-1-107, 36-1-108, 36-1-109, 36-1-110, 36-1-111, 36-1-112, 36-1-113, 36-1-114, 36-1-115, 36-1-116, 36-1-117, 36-1-118, 36-1-119, 36-1-120, 36-1-121, 36-1-122, 36-1-123, 36-1-124, and 36-1-125, relative to adoption.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 36-1-102(9)(A), is amended by adding the words “of the first degree” after “blood aunts or uncles” and by deleting the language “or the blood cousins of the first degree,”.

SECTION 2. Tennessee Code Annotated, Section 36-1-102(24), is amended by deleting the words “within six (6) months prior to the date of the surrender or order of reference” and substituting instead the wording “within one (1) year prior to the date of the surrender or order of reference”.

SECTION 3. Tennessee Code Annotated, Section 36-1-102, is amended by deleting subdivision (29) in its entirety and by substituting instead the following:

(29) “Licensed child-placing agency” means any agency operating under a license to place children for adoption issued by the department;

SECTION 4. Tennessee Code Annotated, Section 36-1-102, is further amended by deleting subdivision (30) in its entirety and by substituting instead the following:

(30) “Licensed clinical social worker” means, for purposes of this part, an individual who holds a Tennessee license as an independent practitioner from the board

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of social worker certification and licensure pursuant to Title 63, Chapter 23, and, in addition, is licensed by the department to provide foster care placement services and adoption placement services;

SECTION 5. Tennessee Code Annotated, Section 36-1-102(40), is amended by deleting the words “or any degree of great-aunts or great-uncles”.

SECTION 6. Tennessee Code Annotated, Section 36-1-106(c), is amended by deleting the words “no home study need be conducted, no court report need be made and no time period for which an adoption petition must be on file before a final adoption order is entered shall be required.”

SECTION 7. Tennessee Code Annotated, Section 36-1-109 (a)(1)(B)(i), is amended by deleting the words “for housing, maternity clothing, child’s clothing, utilities or transportation for a reasonable period not to exceed ninety (90) days prior to or thirty (30) days after the birth or surrender or parental consent to the adoption of the child” and substituting instead the wording “for food, housing, maternity clothing, child’s clothing, utilities or transportation for a reasonable period not to exceed ninety (90) days prior to or sixty (60) days after the birth of the child.”

SECTION 8. Tennessee Code Annotated, Section 36-1-109 (a)(1)(B)(ii), is amended by deleting the words “of up to one (1) year” and substituting instead the wording “during the pregnancy and up to ninety (90) days after the birth of the child”.

SECTION 9. Tennessee Code Annotated, Section 36-1-111(a)(1), is amended by deleting the words “the prospective adoptive parents may request” and substituting instead the wording “the prospective adoptive parents shall request”.

SECTION 10. Tennessee Code Annotated, Section 36-1-111(d)(3), is amended by deleting the words “three (3) days subsequent to the date of the child’s birth, such period to begin on the day following the child’s birth” and substituting instead the wording “seventy-two (72) hours subsequent to the hour of the child’s birth”.

SECTION 11. Tennessee Code Annotated, Section 36-1-111, is amended by deleting subsection (e) in its entirety.

SECTION 12. Tennessee Code Annotated, Section 36-1-111(m), is amended by deleting subdivision (4) in its entirety and by substituting instead the following:

(4) If the child has been brought to Tennessee from another state or territory, or the child is leaving Tennessee to go to another state or territory, a copy of the ICPC Form 100A or other substitute form required for ICPC compliance showing completion of the form or a sworn statement stating why such form is not required pursuant to the ICPC;

SECTION 13. Tennessee Code Annotated, Section 36-1-111, is amended by deleting subsection (q) in its entirety.

SECTION 14. Tennessee Code Annotated, Section 36-1-111(r)(1)(A), is amended in the second sentence by deleting the words “even if the child is not ultimately adopted”.

SECTION 15. Tennessee Code Annotated, Section 36-1-111, is amended by adding the following new subdivision (r)(1)(C):

(C) In the event a waiver of interest is executed and the biological mother never relinquishes her parental rights either through a surrender, parental consent, or by involuntary termination, but she decides, rather, to parent her child, then such waiver of interest shall become null and void and any termination of rights of the putative father based upon the waiver of interest is revoked.

SECTION 16. Tennessee Code Annotated, Section 36-1-111(r), is amended by adding a new subdivision thereto:

(9) Notwithstanding the provisions of this section concerning guardianship, in any surrender involving the placement of a child from this state to another state or territory, or from another state or territory to this state, the provisions of the Interstate Compact on the Placement of Children, compiled at title 37, chapter 4, part 2, shall be followed, and

any guardianship order issued pursuant to such surrender shall not vest full guardianship until such placement has been approved by the interstate compact office of the receiving state or territory.

SECTION 17. Tennessee Code Annotated, Section 36-1-111 (t)(1), is amended by deleting the wording "Upon receipt of the surrender or upon filing a parental consent for an adoption" and substituting instead the wording "Upon the filing of an adoption petition" and is further amended by deleting the wording "six (6) months" and substituting instead the wording "one (1) year".

SECTION 18. Tennessee Code Annotated, Section 36-1-111 (u)(1), is amended by deleting the wording "failure to file the surrender executed pursuant to subsection (h), (i) or (j) within the fifteen-day period required by subsection (q)"; by deleting the wording "failure to obtain an order of guardianship" and by substituting instead the wording "failure to move to obtain an order of guardianship"; and by deleting the wording "shall be grounds for removal" and by substituting instead the wording "may be grounds for removal".

SECTION 19. Tennessee Code Annotated, Section 36-1-111(w)(1), is amended by deleting the wording "Notwithstanding any other provisions of law to the contrary" and substituting instead the wording "Subject to the provision of Section 36-1-111(r)(1)(c)."

SECTION 20. Tennessee Code Annotated, Section 36-1-111(x)(1), is amended by deleting the language "department, and, after the expiration of the ten-day period for revocation," and by substituting instead the language "department and".

SECTION 21. Tennessee Code Annotated, Section 36-1-112, is amended by deleting Section 36-1-112 in its entirety and substituting instead the following:

(a) No surrender may be set aside by a court except as the surrender may be invalidated by court order entered pursuant to a timely filed complaint filed pursuant to subsection (d) or as permitted by order of the court entered pursuant to Section 36-1-118.

(b)

(A) A parental consent may be revoked at any time prior to the entry of an order of confirmation of the parental consent by the court.

(B) The parent who executed the parental consent shall appear before the judge of the court in which the adoption petition is filed, or in the judge's absence, the judge's successor or substitute or, if no successor or substitute, any judge or a court with jurisdiction to adjudicate adoption petitions, and shall execute a revocation of the parental consent.

(c) The form for the revocation of parental consent shall be prescribed by the department pursuant to rules promulgated by it pursuant to this part, and a copy of the form shall be attached to the parent's written notice pursuant to Section 36-1-117(g)(3).

(1) The court or person receiving the revocation shall maintain the originals in the office of the clerk or the office of the person receiving the parental consent, together with the original of the adoption petition containing the parental consent, if available, and shall personally give or shall send by certified mail, return receipt requested, certified copies of the revocations to the child's parents, the prospective adoptive parents, the local office of the department, or a licensed child-placing agency to whom the child had been surrendered, and if the prospective adoptive parents are represented by counsel, a certified copy of the revocation shall be forwarded to such counsel.

(2)

(A) When the revocation is received, the court or the person before whom the revocation was executed shall attach a certified copy of the revocation to a certified copy of the petition for adoption containing the parental consent and shall within three (3) days mail the copies of

both documents by certified mail, return receipt requested, to the adoptions unit in the state office of the department in Nashville.

(B) If the revocation must be executed before a court or person before whom the adoption petition was not filed, the original of the revocation shall be sent within three (3) days to the court in which the adoption petition was filed, and that court shall be responsible for sending the forms to the department and to the persons or agencies who are entitled to copies of the revocation.

(C) The department shall record the revocation with the copies of the adoption petition containing the parental consent and the order of guardianship for purposes of tracking the adoptive placement status of the child.

(d) After the surrender has been executed or after the court has entered an order confirming a parental consent, no surrender or waiver of interest or parental consent shall be set aside by a court except upon clear and convincing evidence of duress, fraud, intentional misrepresentation or for invalidity under Section 36-1-111(d), and no surrender, waiver of interest, or parental consent may be set aside for any reason under this part unless the action based on these grounds is initiated within thirty (30) days of the execution of the surrender, waiver of interest or within thirty (30) days of the date of entry of the order of confirmation of the parental consent.

(e)

(1) A surrender set aside or parental consent which is revoked or set aside shall have the effect of returning the child's legal status to that which existed before the surrender was executed, and the department, a licensed child-placing agency, or the person who or which had custody or guardianship of the child prior to the surrender pursuant to any parental status, prior court order or

statutory authorization shall continue or resume custody or guardianship under that prior parental status, prior court order, or statutory authority, which had established the custodial or guardianship status of the child prior to the execution of the surrender or parental consent, unless a court of competent jurisdiction shall otherwise determine as specifically provided herein.

(2)

(A) Unless they had received or maintained custody or guardianship of the child pursuant to a court order entered or pursuant to statutory authority prior to the execution of the surrender or parental consent, the department, the licensed child-placing agency, or the person(s) to whom the child was surrendered and who has physical custody of the child, shall, within five (5) days of the receipt by such department, agency or person of the revocation, return the child to the child's parents or guardian who executed and revoked the parental consent; provided, that a sworn complaint may be filed in the court where the revocation was executed or in the court in which the adoption petition was filed, to show cause why the child would likely suffer immediate harm to the child's health and safety if returned to the child's parent(s) or guardian who had executed the parental consent.

(B) If a complaint is filed pursuant to subdivision (3)(2)(A), the child shall remain in the physical and/or legal custody or guardianship of the persons or agencies to whom the child was surrendered or with respect to whom the parental consent was executed until the court makes any further orders pursuant to this section, and those persons or agencies shall have authority to provide any necessary care and supervision of the child, subject to further orders of the court.

(C)

(i) The complaint filed under subdivision (2) shall name the parent(s) or guardian who executed parental consent as defendant(s). Except for cause shown in an order entered on the record, the court shall hold a preliminary hearing within three (3) days of the filing of the petition to determine if there is probable cause to believe that the child will be subject to immediate harm to the child's health or safety if the child is returned to the child's parent(s) or guardian.

(ii) If probable cause is not established in the preliminary hearing, the child shall be immediately returned to the child's parent(s) or guardian who executed the parental consent which has been revoked.

(iii) If probable cause is established, the court shall continue the child in the custody of the persons or the agency to whom the child was surrendered or with respect to whom a parental consent was executed, subject to further orders of the court, pending the final hearing.

(iv) The court may make any necessary orders pending the final hearing for the protection of the child.

(D) The case shall be set for a final hearing on the merits within thirty (30) days of the preliminary hearing except for cause shown in a written order of the court entered on the record.

(E) Unless clear and convincing evidence at the final hearing shows that the child's safety and health would be in immediate danger if the child is returned or remains in the custody of the parent or guardian

who executed the surrender or filed the parental consent, the complaint shall be dismissed and if the child was not returned to the parent at the preliminary hearing, the child shall be immediately returned to the child's parent or guardian who had executed the surrender or filed the parental consent.

(3)

(A) If no complaint is filed pursuant to subdivision (2), the court where the surrender or parental consent was revoked shall enter any orders which are necessary to effect the return of the child to the parent(s) or guardian who had custody of the child prior to the execution of the surrender or prior to filing the parental consent, unless another person, the department, or a licensed child-placing agency had custody or guardianship of the child under a prior order entered before the execution of the surrender or filing of the parental consent, or which had custody or guardianship under statutory authorization prior to the execution of the surrender or parental consent which was revoked by that parent.

(B) The court in which a surrender, revocation or parental consent is given or filed, or adoption court may not modify any prior custody or guardianship order which had given custody or guardianship of the child to the department, a licensed child-placing agency, or another person under a prior order or pursuant to any statutory authorization prior to the surrender or the filing of the parental consent, and if such order of statutory authority exist, the court's jurisdiction over the child shall terminate after the execution of the revocation of the surrender or parental consent, and the prior parental status, prior court order or prior

statutory authority shall continue in effect; provided, that if for any reason, the agencies or persons who had prior custody or guardianship of the child are unable or unwilling to resume custody of the child, the court receiving the revocation shall be authorized to make a custody determination and award temporary custody of the child to any suitable person, the department, or a licensed child-placing agency with custodial authority pursuant to Section 36-1-140, or it may make an order of guardianship or partial guardianship pursuant to Section 36-1-102, with the right to adopt or consent to the child's adoption.

(4) In the event that the surrender was executed before a person or court under Section 36-1-111(h), (i) or (j), the chancery, circuit or juvenile court where the surrender was filed pursuant to Section 36-1-111(q), or in the county where the child resides in Tennessee if the surrender has not been filed, shall have jurisdiction to enter orders in compliance with this subsection to effect the child's return to the child's parent(s) or guardian or to provide for the child's custody or guardianship as permitted herein.

(f) If the child is not returned to the child's parent(s) or guardian pursuant to subdivision (e)(2)(E), and unless the department, a licensed child-placing agency, or another person to whom the child was surrendered or to whom a parental consent was executed had custody or guardianship of the child pursuant to a court order entered prior to the filing of the surrender or the parental consent or pursuant to statutory authorization prior to the execution of the surrender or parental consent, the court where the revocation was executed shall have jurisdiction following a revocation of the surrender or parental consent to award temporary custody to any appropriate person, the department, or any other licensed child welfare agency, with the authority as legal custodian pursuant to Section 36-1-140, or the court may award guardianship or partial

guardianship pursuant to Section 36-1-102, with the right to adopt or consent to the child's adoption.

(g) The department or a licensed child-placing agency or licensed clinical social worker shall have the right to intervene in any complaint filed pursuant to subdivision (e)(2)(A), for the purpose of introducing proof as to the child's health and safety.

SECTION 22. Tennessee Code Annotated, Section 36-1-113(d)(3)(A)(i), is amended by deleting the wording "three (3) working days" and by substituting instead the wording "ten (10) working days."

SECTION 23. Tennessee Code Annotated, Section 36-1-113(f), is amended by deleting subdivisions (3), (4), and (5).

SECTION 24. Tennessee Code Annotated, Section 36-1-113(g)(6), is amended by deleting the language " , and the child is under eight (8) years of age at the time the sentence is entered by the court".

SECTION 25. Tennessee Code Annotated, Section 36-1-116(a)(1), is amended by deleting the wording "may contact" and by substituting instead the wording "shall contact".

SECTION 26. Tennessee Code Annotated, Section 36-1-116(a)(2), is amended by deleting the wording "six (6) months" and substituting instead the wording "one (1) year".

SECTION 27. Tennessee Code Annotated, Section 36-1-116(b)(13), is amended by deleting subdivision (A) in its entirety and by substituting instead the following:

(A) That, if the child is less than thirty (30) days old at the time the petition is filed, the petitioner confirms that notice of the filing of the adoption petition was provided to the registry;

SECTION 28. Tennessee Code Annotated, Section 36-1-116(b)(14), is amended by deleting the wording "included or attached as an exhibit to the petition" and by substituting instead the wording "filed with the petition".

SECTION 29. Tennessee Code Annotated, Section 36-1-116(b)(15)(A), is amended by deleting the wording “evidence shall be attached to the petition” and by substituting instead the wording “evidence shall be filed with the petition”.

SECTION 30. Tennessee Code Annotated, Section 36-1-116(c), is amended by deleting the wording “three (3) business days” and substituting instead the wording “five (5) business days”.

SECTION 31. Tennessee Code Annotated, Section 36-1-116(d), is amended by deleting the wording “Any person who files a petition to adopt a child less than thirty (30) days old” and by substituting instead the wording “Any person who files a petition to adopt a child less than thirty (30) days old, or any licensed child-placing agency who has placed a child with any person who files a petition to adopt a child less than thirty (30) days old”.

SECTION 32. Tennessee Code Annotated, Section 36-1-116, is amended by deleting subsection (e) in its entirety and by substituting instead the following:

(e)(1)

(A) Upon filing of the petition for adoption, if a surrender was executed, the petitioners shall inform the adoption court of the name of the court in which the surrender was filed, and the adoption court shall request the court where the surrender was filed to forward a certified copy of the surrender and copies of the medical and social information obtained at the time of the surrender to the adoption court and any court reports based upon home studies which were ordered by the court. This information shall be made a part of the adoption record, but shall be confidential and shall be placed in a sealed envelope within the court file or shall be filed in a protected, electronically maintained file and shall remain under seal and shall not be open to inspection by any person or agency other than the department or the licensed child-placing agency or licensed clinical social worker to which the order of reference is issued under this

subsection, except by written order of the court or as otherwise permitted under this part.

(B) If, at the time the petition is filed, the petitioners have custody of the child, and the petitioners have not submitted to the court a court report based upon a timely home study or timely preliminary home study with the petition, and unless the court waives the home study or the preliminary home study for petitioners who are related to the child, the court shall, within five (5) days of the date the petition is filed, order, through the order of reference, a licensed child-placing agency or licensed clinical social worker chosen by petitioners, or the department if the petitioners are indigent under federal poverty guidelines, to conduct a preliminary home study, and a court report based upon such a study must be submitted within fifteen (15) days of the date of the order, and the court may enter any orders necessary for the child's care and protection as permitted by subsection (f), pending receipt of the preliminary home study. Except for good cause shown, the court shall issue the order of reference to the licensed child-placing agency, the licensed clinical social worker, or the department which conducted the home study pursuant to the prospective adoptive parents' request pursuant to subsection (a).

(2) The information in subdivision (1) shall be made available to the licensed child-placing agency or licensed clinical social worker or the department which responds to the order of reference. If the necessary medical and social information was obtained by the court pursuant to the provisions of Section 36-1-111, it shall not be necessary for the department or the licensed child-placing agency or licensed clinical social worker to have any further contact with the biological parents in response to the order of reference, unless it is believed the information contained in the statements is inaccurate or incomplete, in which case the department, licensed child-placing agency, or the licensed

clinical social worker may contact the biological or prior legal parents or the guardian to obtain such information.

(3)

(A) A preliminary court report, or a supplemental court report if a preliminary report on the home study is required under (e)(1)(B), shall be filed by the department, the licensed child-placing agency or the licensed clinical social worker within sixty (60) days of the receipt of the order of reference and may be supplemented from time to time as the licensed child-placing agency, the licensed clinical social worker or the department determines necessary, or as ordered by the court.

(B) A final court report shall be submitted within forty-five (45) days prior to the finalization of the adoption.

SECTION 33. Tennessee Code Annotated, Section 36-1-117(c), is amended by deleting the first sentence in its entirety and by substituting the following:

If a child who is the subject of an adoption proceeding does not have a legal father, the parental rights of a putative biological father of a child who has not filed a petition to legitimate the child or who has not legitimated the child who is the subject of an adoption proceeding, and who meets any of the limited following criteria, shall be terminated by surrender, parental consent, termination of parental rights pursuant to Section 36-1-113, or by waiver of interest, before the court may enter an order of adoption concerning that child.

SECTION 34. Tennessee Code Annotated, Section 36-1-117(g)(3), is amended by deleting the wording "by the court of the appearance date" and by substituting instead "by the attorney for the adopting couple of the appearance date."

SECTION 35. Tennessee Code Annotated, Section 36-1-119, is amended by deleting subsection (a) in its entirety and by substituting instead the following:

(a) Unless the child is related to the petitioners, no final order of adoption shall be entered before the home study, or a court report based upon the home study, has been filed with the court and before the petition has been on file at least six (6) months and before the final court report is filed with the court.

SECTION 36. Tennessee Code Annotated, Section 36-1-119(b), is amended by deleting the wording "If the child is related to the petitioners" and by substituting instead the wording "If the child is related to the petitioners, and the child has already resided in the home of the petitioners for six (6) months".

SECTION 36. Tennessee Code Annotated, Section 36-1-119, is amended by changing subsections "(d)" and "(e)" to read "(g)" and "(h)" and adding the following new subsections (d), (e) and (f):

(d) Before the entry of the final order, there shall be filed with the proposed order:

(1) An affidavit by the attorney for the petitioners detailing the fees charged for any services rendered in the placement of the child or for legal services, and any fees paid by the attorney to any other person or entity for services rendered in securing the placement of the child or for providing any services related to securing any home studies to secure a surrender or adoption of the child; and

(2) An affidavit by the licensed child-placing agency or licensed clinical social worker which placed the child with the petitioners regarding the fees charged by such agency or social worker to the adoptive parents for the placement of the child and for any home studies and supervision of the placement conducted by the licensed child-placing agency or by the licensed clinical social worker.

(e) The court shall review the affidavits required in subsection (d) and shall determine whether all fees set forth therein are reasonable. The court shall retroactively approve such fees or order reimbursement of any fees it determines to be unreasonable.

(f) The court shall, if satisfied that all the requirements necessary for the adoption of the child are present, thereupon decree the adoption of the child by petitioners and shall order that the name of the child be changed to that requested by the petitioners.

SECTION 38. Tennessee Code Annotated, Section 36-1-120(a)(2), is amended by adding after the word "stepparent" the wording "or biological relative".

SECTION 39. Tennessee Code Annotated, Section 36-1-120(a), is amended by adding the following:

(14) That the name of the child be changed to that requested by the petitioners;

SECTION 40. Tennessee Code Annotated, Section 36-1-120, is amended by deleting subsections (b) through (g) and by substituting instead the following:

(b) The clerk of the court shall furnish the department a certified copy of all final orders of adoption and the affidavits required under Section 36-1-119(d) or final orders dismissing the adoption proceedings, and the department shall record pertinent information from the order, and the department shall maintain a copy of the order with all other information in the sealed adoption record.

(c)

(1) All final orders of adoption shall be reported by the clerk to the division of vital records of the department of health by sending a certified copy of the order or a certified certificate of adoption, and by reporting the information required by that division for a new certificate of birth or for a Report of Foreign Birth for the child to the registrar of the division of vital records for preparation of

a new certificate of birth by adoption or for a Report of Foreign Birth as provided in Sections 68-3-310 - 68-3-313.

(2) The court clerk shall supply the registrar of the division of vital records the following information for the preparation of a Report of Foreign Birth if the child who has been adopted was born in a foreign country:

- (A) The full adoptive name of the child;
- (B) The adopted child's date of birth;
- (C) The adopted child's sex;
- (D) The city, province and country of the adopted child's birth;
- (E) The full name of the adoptive father;
- (F) The full name of the adoptive mother; and
- (G) The legal residence of the adoptive parents.

(d) Costs for furnishing certified copies under subsections (c) and (d) shall be taxed to the petitioners.

SECTION 41. This act shall take effect upon becoming a law, the public welfare requiring it.